

REMARKS

Claims 1-33 are pending in the present application, although claims 8 and 21 have been withdrawn from consideration by the Examiner. Claims 1, 19 and 27 are amended herein in compliance with the Examiner's suggestion. The title is amended to more fully describe Applicant's invention.

Applicant respectfully requests reconsideration and withdrawal of the rejections of Applicant's claims based on the foregoing amendments and the following remarks.

Rejection Under Section 112, First Paragraph

Claim 3 stands rejected as lacking support in the specification. Applicant respectfully traverses this rejection. The Examiner is respectfully referred to page 21, lines 14-17 of the specification, wherein Applicant stated:

The resealable closure of the present invention does not require a reclosure strip in addition to the resealable closure elements described herein. In one embodiment the resealable closure does not include such a reclosure strip.

Thus, the subject matter of claim 3 is fully supported in the application as filed. The Examiner is requested to note the distinction between a reclosure strip and the resealable closure elements of the presently disclosed and claimed invention.

Rejections Under Section 112, Second Paragraph

Claims 1, 19 and 27 stand rejected as indefinite because the term "enclosure" is asserted to be indefinite. The Examiner suggested this term should be replaced with "closure". Although Applicant respectfully submits that the term "enclosure" is not incorrect, in order to advance the prosecution of the application, and because the term "closure" is considered to be of identical scope to the term "enclosure" as used in these claims,

Applicant has amended claims 1, 19 and 27 as suggested by the Examiner. Appropriate reconsideration and withdrawal of the rejection of these claims on this ground is respectfully requested.

Claims 15 and 26 stand rejected as indefinite based on a perceived inconsistency between the dependent claims 15 and 26 and the respective base claims 1 and 19. Specifically, the Examiner asserts that the peel strength in the base claim of "up to about 1 pound per inch" is inconsistent with the peel strengths recited in the dependent claims "greater than one pound per inch". Applicant respectfully traverses these rejections. There is no inconsistency. The peel strength of "up to about 1 pound per inch" recited in claims 1 and 19 relates to the adhesion between the release surface and the releasable adhesive. The peel strength of "greater than one pound per inch" recited in the dependent claims 15 and 26 relates to the adhesion between the releasable adhesive and the main body portion or the extended body portion (claim 15) or the body portion or flap portion (claim 26) to which the releasable adhesive is more permanently adhered, i.e., the surface to which it is not intended to be released from when the resealable closure is re-opened.

Accordingly, Applicant respectfully submits there is no inconsistency between these claims, and so there is no indefiniteness in claims 15 and 26. Appropriate reconsideration and withdrawal of the rejection of these claims on this ground is respectfully requested.

Rejections Over the Prior Art

Claims 1-6, 9-20, 22, 24-26 stand rejected as obvious over Peck, U.S. Patent No. 4,871,265, and claims 7 and 23 stand rejected as obvious over Peck in view of Howard, U.S. Patent No. 4,495,318. Claims 1, 16, 17, 19, 20, 22, 24-29 and 31-33 stand rejected as obvious over Burns, U.S. Patent No. 4,690,322, claim 23 stands rejected as obvious over Burns in view of Howard, and claim 30 stands rejected as obvious over Burns in view of Young, U.S. Patent No. 3,648,923. Applicant respectfully traverses the rejections of these claims for the following reasons.

In summary, Applicant respectfully submits that the Examiner has failed to state a case of *prima facie* obviousness with respect to each of Applicant's claims. The Examiner has failed to identify all of the limitations of Applicant's claims in the prior art, has failed to identify any motivation to select the recited features of Applicant's claimed invention, and has failed to show a reasonable expectation of success. In particular, the Examiner has failed to show the *prima facie* obviousness of the claimed invention in that the Examiner has failed to identify the specified peel strengths in the prior art, in combination with the other claimed elements. All of the independent claims of the present application specify that the peel strength of the releasable adhesive is up to about one pound per inch. The specification discloses benefits obtained from this specific peel strength. A similar product including all of the claimed limitations is neither disclosed nor suggested in the prior art.

In setting forth the rejections, the Examiner admitted that both Peck and Burns fail to disclose the recited peel strength. The Examiner attempted to cure this failure by asserting, with respect to Peck, that

the peel strength of the adhesive would have been an obvious matter of routine experimentation and mechanical expedience for one of ordinary skill in the art because Peck states that his invention "provides a desired controlled or preselected adhesion release surface."

This assertion not only fails to identify the claimed peel strength, but it also fails to even mention peel strength. In setting forth the rejections over Burns, the Examiner made essentially the same admission and argument with respect to the peel strength of the releasable adhesive. This fails to establish a *prima facie* case of obviousness.

The examiner bears the burden of establishing a *prima facie* case of obviousness. *In re Rijckaert*, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); *In re Oetiker*, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if this burden is met does the burden of coming forward with rebuttal argument or evidence shift to the applicant. *Rijckaert*, 28 USPQ2d at 1956. When the references cited by the examiner fail to establish a *prima facie* case of obviousness, the rejection is improper. *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The rejection is applying an improper standard of obviousness. There must be some motivation provided by the references to modify or combine the reference(s) as contended by the Examiner. To establish a *prima facie* case of obviousness, the Examiner must establish: (1) some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) a reasonable expectation of success; and (3) that the prior art references must teach or suggest all the claim limitations. See MPEP 706.02(j)). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not be based on Appellant's disclosure. *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the present case, the Examiner has merely alleged that, of the entire broad, virtually unlimited range of possible peel strengths which might be selected based on the teachings of Peck and Burns, it would have been obvious to select Applicant's specified peel strengths. The range disclosed by the references is far too broad and the Examiner has not shown either teaching or suggestion in the cited references, or elsewhere, to select a range such as that presently claimed. In addition, the Examiner has failed to show a reasonable expectation of success in selecting such a range of peel strengths.

Thus, the Examiner has failed to identify any suggestion or motivation to select these particular peel strengths, has failed to show a reasonable expectation of success that the recited peel strengths would provide a useful product, and has failed to show all the claim limitations in the prior art. Therefore, the Examiner has failed to establish even a *prima facie* case of obviousness.

Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections of the claims.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance, and respectfully requests the Examiner to so indicate.

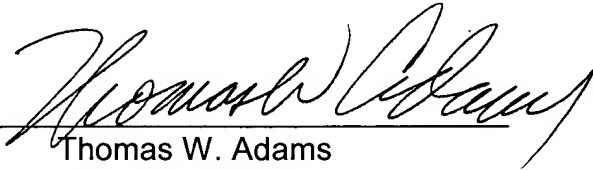
In the event issues arise as a result of the filing of this paper, or remain in the prosecution of this application, Applicants request that the Examiner telephone the undersigned attorney to expedite allowance of the application. The fee for a Petition for Extension of Time of two months is included herewith. If an additional extension is necessary, petition therefor is hereby made and, if any additional fees are required for the filing of this paper, the Commissioner is authorized to charge those fees to Deposit Account #18-0988, Docket No. AVERP3012US.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

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By



Thomas W. Adams

Reg. No. 35,047

1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115
(216) 621-1113
(216) 621-6165 (fax)

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